OPP Fact: "...[D]irect payment media receive more revenues than advertiser supported broadcasters from audiences of the same size. Thus they are able to present programming that would not be financially viable for broadcasters, and they may be able to purchase more expensive, and presumably more attractive, programming."[43]

INTV Critique: This juxtaposition of thoughts is misleading. Media with dual revenue streams derive more revenue for programming of the *same size audience*. However, cable networks draw considerably smaller audiences, as might be expected in light of their smaller "circulation" than the broadcast networks. They can present programming attractive only to niche audiences because they can supplement advertising revenue, which would be insufficient to support the program, with direct payments. That cable systems may be able to purchase more attractive (more expensive) programming, however, while true in theory, ignores that such programming already is available via advertiser-supported television. The viewer is unlikely to pay for what is available *gratis*. Most general audience cable networks are more like independent stations, as the Commission has recognized. They have made no attempt to compete head-on with the networks. Thus, the demand for network quality programming has not increased appreciably. The exceptions are truly unique programs like high-visibility sports events. If cable buys the World Series or Super Bowl, then the networks can offer no competitive programming. Those events are unique. The OPP staff does concede that such programs "are likely candidates to be bid away to pay or pay-per-view services."[44] Similarly, at the local level, the transition of local team sports telecasts from broadcast to cable confirms the ability of cable to acquire unique program product, but not product like network entertainment programming for which substitutes would be available without charge on the networks.

OPP Opinion: "...[I]ncreasing program expenditures almost certainly will not bring back the networks' old audience shares, as CBS's unsuccessful attempt to increase its audience shares by purchasing expensive sports programming suggests."[45]

INTV Critique: The CBS experience with sports may not be the best example. Sports is a particularly unique type of programming, and prices for sports programming have been bid up by cable television. Nonetheless, the CBS sports contracts must be viewed in context. First, they are multi-year contracts. Their ultimate performance may be evaluated only after their full term has run. Second, CBS did achieve excellent ratings with the recent league championship series and the World Series. Third, the value to CBS from sports programming like the World Series extends beyond the advertising revenue derived from sale of time. The large audience also provides an incomparable opportunity to cross-promote other CBS programming.

OPP Fact: "The expansion in the number of independent stations over the past decade considerably increased the demand for syndicated programming, and satellites have reduced the cost of distribution. The syndication market in recent years has produced large numbers of new first-run programs. In fact, 18 of the 25 most popular syndicated programs, and eight of the top ten, are first run. The others are off-network series."[46]

INTV "One More Time": INTV already has debunked the relationship between the expansion in the number of independent stations and demand for first run syndicated programming.[47]This especially is true with respect to the most popular first run programs which achieve their popularity via exhibition on network affiliates, not independents.

OPP Fact: "Recently, however, demand for syndicated programs, not counting Fox programming, has declined for two reasons. First, 35% of independents have now affiliated with the Fox network, which has reduced the demand for other syndicated programming. Second, many independent stations are in a weak financial position because of over-expansion and because of the current recession. Recently, prices paid for syndicated programming are reported to have fallen."[48]

INTV Reality Check: The emergence of Fox has had much less effect on syndicated programming demand than one might expect. The critical daypart for independent stations is early fringe time, when no Fox programming is available. In prime time, when Fox programming is fed to affiliated stations, the independent stations rarely would have scheduled syndicated series programs. Most broadcast feature films or sports telecasts. Thus, the demand for syndicated series would not have decreased appreciably. The staff also ignores the supply side of the equation. The market currently appears to be glutted with "second tier" off-network syndicated programming. Whereas the supply of highly attractive hits has remained small, the supply of programming the next level down in attractiveness is in a temporary bulge.

OPP Fact: "The growth in the number of cable networks has resulted in a major increase in the quantity of programming produced...."[49]

INTV Question: The staff offers no facts to back this assertion. It appears belied by the amount of syndicated programming (as opposed to originally produced programming) shown on cable networks. In any event, little network quality programming has been produced for cable networks. As the staff concludes, "Programming on most basic cable channels, however, remains less expensive than that of the broadcast networks."[50]

OPP Opinion: "To the extent that broadcast networks ever had market power in the program acquisition market, additional purchasers of programming have eliminated that market power, allowing program producers to raise prices and reap more of the profits. To the extent that some programs are uniquely popular and cannot be duplicated, increased demand can allow producers to maintain high prices and profits for an indefinite period. In such cases much of the profit generated by large audiences will be captured by the talent (directors, actors, athlete, etc.) that create the programs."[51]

INTV Critique: The Commission has concluded that networks retain sufficient power to extract valuable rights from producers. Again, the new demand is not for network quality programming, but for less expensive programming which hardly is substitutable for network programming. This does not detract from network power because demand for network programming has grown only marginally. Moreover, program producers disagree with the conclusion that they have been able to raise prices. They insist that networks have held prices down. As to uniquely popular programming, the Commission is correct; producers do raise prices to cover increasing talent costs. However, this programming far from represents the bulk of network programming. Additionally, whereas the potential success of a program, by virtue of its genre and talent can be estimated, the ability of program talent to raise their fees follows, not precedes, the network exhibition of the program.

OPP Opinion: "It should be noted that the ability of various media to purchase programing of a given quality is a different issue from market power in program purchase. Here the question is whether given purchasers have the ability to make roughly comparable program expenditures, not the ability of firms to behave anticompetitively.[52]"

INTV Reality Check: However, if only a few like entities purchase programming of a certain quality (*i.e.*, expense per program or episode), then they "make" the market in that type of programming. Whereas this may be a different issue than market power, but if three entities make a market in network quality programming, then those three entities have market power. The Commission already has come to that conclusion![53]

OPP Opinion: "The relevant market for the purpose of the financial interest and syndication rules, for example, includes not only broadcast and cable, but theatrical movies and home video. In this market, individual broadcast networks have small market shares. A large number of cable networks are independent purchasers in this market, and some pay high prices for programming."[54]

INTV Critique: This also may be a convenient way to justify elimination of the financial interest and syndication rules. The staff neglects, however, that the Commission has reached contrary findings and conclusions. In reality, broadcast network programming is unique in light of the mass audience available only to the networks. Thus, network programming is a distinct market or submarket in which the networks represent 100% of the market As noted above, the cable networks have no incentive to acquire network quality programming as long as such programming is available on the broadcast networks. Viewers cannot be expected to pay for what also is available for no charge. Only in the case of unique programming like sports events can cable networks require viewers to pay for what previously has been available for free. As the staff acknowledges, sports programming exemplifies the case of cable's dual revenue stream enabling cable to outbid broadcast networks for programming.

OPP Facts: "While pay and pay-per-view cable present some expensive highly popular programming, overall expenditures on cable programming, particularly basic cable programming, are lower than those for broadcast network programming, though cable expenditures are rising and basic cable has begun to present first-run series and other programming resembling that of broadcast networks. Cable is estimated to account for only 16 percent of total program expenditures but about 32 percent of audiences."[55]

INTV Cheer: This is just what INTV has been saying! Moreover, a Yugo may "resemble" a Jaguar, but....Finally, cable relies heavily on pre-existing product and often that which is older or otherwise not expected to perform well on broadcast television. That it should cost much less than production of new network quality programming should be no surprise.

OPP Facts: "Revenues of cable networks were thus 49 percent of those of broadcast networks in 1990, and are projected to increase to 60 percent in 1995. Cable network program expenditures were 39 percent of the broadcast network total in 1990 and are projected to be 48 percent in 1995."[56]

INTV Critique: This is a misleading comparison in some respects. The per network revenue or expense or per program expense would reveal a far different comparison. Three major broadcast networks are included on one side of the comparison versus over a hundred cable networks.

OPP Fact: "...[I]ndustry reports suggest that about half of cable networks' revenues come from license fees."[57]

INTV Critique: The "source" for this assertion by the staff is a statement over five years ago in a filing with the FCC by ESPN. Such a stale generalization is flawed inherently and would be valid only by coincidence. What this illustrates is the Commission's error in giving the staff the benefit of a presumption which other parties must rebut. The staff findings -- like this one -- often are too thinly premised to justify a presumption. This is particularly true in cases where the Commission already has rejected the staff's findings or conclusions. as it has in some respects concerning network power in the programming marketplace.[58]

OPP Suggestion: "At the same time, the large programming expenditures of the broadcast networks may suggest that broadcast networks' programming funds are being spent inefficiently. The networks' high program expenditures also suggest the possibility that some of the profits of broadcasting are being passed on to the program production industry in high payments for top actors and other talent, and that reduced expenditures on programming might not result in commensurate reductions in quality."[59]

INTV Response: The latter point is valid. The networks must make high payments for talent in order to maintain the distinctly higher quality of their programming. If they abandoned the top level talent to cable, then cable could charge for the top quality programming because it no longer would be available from the networks. Consequently, the networks will continue to pay top talent the going rate, although efficiencies may be achieved at other levels. Furthermore, a distinction in the efficiency of network programming expenditures probably should be drawn between between network program *acquisition* and *production*. In the latter case, networks can control more readily the efficiency of their expenditures.

OPP Prediction: "In large markets, audiences probably will remain large enough to support many television stations, particularly since over-the-air alternatives are so plentiful in these markets that cable penetration remains relatively low."[60]

INTV Reality Check: Cable penetration in the large markets is not relatively low in other than a very marginal sense. Only in a handful of markets does cable penetration vary significantly from the national average.[61]

OPP Speculation: "In markets below the top ten....a reduction in the number of stations may occur, which would reduce over the air choice. One can speculate, however, that local programming will be affected little by stations leaving the market, since marginal stations apparently spend very little on local programming."[62]

INTV Critique: One can speculate about anything, but speculation is no basis for Commission action. Moreover, looking only to the amount spent for local programming may obscure that more marginal stations provide local programming more efficiently than large network affiliates which for years worried about little more than how to spend all the money they made. This is not whining. Affiliates until recently had little incentive to be efficient about anything.

OPP Prediction: "For the three conventional television networks the decline in audience shares will probably slow over the decade as cable matures and as marginal independents go dark."[63]

INTV Critique: INTV finds the concept -- one readily embraced by the staff -- of networks nibbling at the carcasses of defunct independents just a little disturbing. The 30-40% of television viewers who will not be cable subscribers even then undoubtedly find this cavalier attitude towards the reduction of their viewing options distasteful. Nonetheless, the staff's assertion does crystallize the issue: Should government policies promote service to all or to just the majority which can afford cable?[64]

OPP Fact: "We have noted that marginal stations probably produce little local news or public affairs programming, so the loss of local content probably will be negligible."[65]

INTV Critique: "Probably"....In any case, this is not what the staff noted previously. It noted that marginal stations spend less for local programming, not that they did less. Even if they do less, they still must provide a sufficient amount to warrant license renewal. Therefore, their contribution to the discussion of significant issues in their communities cannot be so lightly dismissed.

OPP Prediction: "In large markets, over-the-air service probably will remain plentiful. Large populations will still be able to support many stations, and good over-the-air service will keep cable penetration lower than in other areas."[66]

INTV Critique: The staff, again, is perpetrating a erroneous premise. No matter how many times it is repeated, however, it simply is not true that cable penetration is appreciably lower in larger markets. To the extent it might be in a few large markets, those markets still may not be built out completely.

OPP Opinion: "...[C]able and DBS between them could offer all the services now provided by over-the-air broadcasters."

INTV Critique: However, they cannot provide them to 100% of the nation's television households. Cable subscribers may get local programing provided by cable; DBS may be available to all television households. Only broadcast television can provide local service to 100% of television households. Congress figured that out in 1934, and it is no less true today.

OPP Opinion: "Changes in regulation may permit television broadcasters to achieve efficiencies that could allow them to become more effective competitors in an increasingly multichannel environment."[67]

INTV "Last Word": Great...as far as it goes, but....such efficiencies would be of marginal benefit and small solace to an independent station forced to buy programming from a network-owned syndicator, while competing with the network's affiliate and depending on a competing network owned cable system to provide it access to the audience it is licensed to serve. This hardly is to say the Commission should throw up its hands and quit. Marginal steps forward still are steps forward. Nonetheless, some larger steps, like maintaining broadcast stations' access to their audiences via cable gatekeepers and preventing destructive vertical integration of critical markets will do far more to preserve broadcast service to the public.

Endnotes

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[1]Setzer, Florence, and Levy, Johnathan, "Broadcast Television in a Multichannel Environment," OPP Working Paper Series, No. 26 (June, 1991), 6 FCC Rcd 3996 (1991) [hereinafter cited as "OPP Paper"].

[2]*Notice of Inquiry*, MM Docket No. 91-221, FCC 91-215 (released August 7, 1991) at ¶1 [hereinafter cited as *NOI*].

[3]*Id.*

[4]The staff also has qualified its predictions based on other factors which might weaken or eliminate the premises of those predictions.

[5]INTV must state its concern that the language of the *NOI* appears to establish a presumption of validity with respect to the findings and conclusions of the OPP Paper:

> If commenters disagree with respect to the conclusions and predictions of the staff study, we request that they offer specific evidence to support alternative conclusions.

NOI at ¶ 2. Much of INTV's concern is not with the underlying facts, but with the staff's conclusions based on those facts. Whereas many of the staff assumptions may appear reasonable, alternative conclusions or assessments of the facts presented may be even more reasonable or supportable in light of the evidence already gathered and presented by the staff.

[6]OPP Paper at 9, n.7.

[7]CablePoll™ research conducted by *Cablevision* and Midwest CATV found that 47% of cable operator respondents agreed that a cable operator was a gatekeeper. According to *Cablevision*, the survey also demonstrated "that the principal roadblock against adding new services is economics. *In other words, after cutting away all the do-good rhetoric, the customer is not king; the system's balance sheet is.* "To Fill or Not to Fill," *Cablevision*, February 11, 1991, at 23, 24. Thus, when consumer preferences are muted by cable operator attention to the bottom line and stations are denied access to potential viewers in their markets, assumptions about the responsiveness of advertiser-supported broadcasting to consumer demand must be discounted.

[8]Cable television's emerging public policy "Achilles heel" is not the compulsory license, but its gatekeeper function in the local and national video marketplaces. The Commission readily tolerates in the broadcast-cable relationship, however, what it would never tolerate in the relationship between local exchange carriers and competing long distance and enhanced service providers -- namely, outright refusals to provide access to consumers and grossly discriminatory access (*e.g.*, disadvantageous channel position.).

[9]OPP Paper at 9.

[10]INTV has proposed a comprehensive analysis of television channel utilization. The information was derived from Commission and other commercial sources. The analysis is submitted to the Commission herewith as Exhibit 1 to INTV's Comments.

[11]OPP Paper at 9, n.8.

[12]Comments of CBS, Inc. , MM Docket No. 90-162, filed June 14, 1990, at 13, fig. 2.

[13]OPP Paper at 10.

[14]OPP Paper at 15, 17. OPP explains that:

> Cable carriage of over-the-air signals reduces the disadvantage of UHF relative to VHF stations by increasing UHF stations geographic reach and improving their reception quality. Channel positioning also appears important to the success of broadcast stations, and cable systems can give UHF stations desirable low channel positions.

Id. at 17. Thus, for example, in May, 1989, independent stations were available to viewers on channels 13 or below 34% of the time off-the-air, but 60% of the time on cable systems. Nielsen Station Master, Cable Records Databases (May, 1989).

[15]Comments of INTV, MM Docket No. 89-600 (filed March 1, 1990) at Attachment 13.

[16]OPP Paper at 27-28.

[17]*Communications Daily*, Friday, September 13, 1991, at 8.

[18]Network TV Association, *Viewers Choice: The Value of Higher Ratings,* as reported in *Communications Daily,* October 30, 1991, at 4-5.

[19]OPP Paper at 31, n.27.

[20]*See* Comments of INTV, MM Docket No. 90-4 (filed September 25, 1991) at 32-3., Exhibit A.

[21]OPP Paper at 31.

[22]OPP Paper at 32.

[23]INTV does concur that the cost of talent, whether it be a successful writer or director or a first baseman or linebacker, has increased dramatically, but, again, this primarily is for programming which has proven itself to be highly attractive. is limited. On the other hand, reruns of *Route 66* very likely can be licensed for a song, regardless of the number of video outlets.

[24]OPP Paper at 34.

[25]OPP Paper at 9.

[26]OPP Paper at 34.

[27]*See* Reply Comments of INTV, MM Docket No. 90-162 (filed November 21, 1991), Exhibit 2.

[28]*See* Comments of INTV, MM Docket No. 90-4 (filed September 25, 1991).

[29]Many such "second-tier" independents carry older off-network programming or specialty programing, both of which program types usually are available on cable.

[30]*See,e.g.*, Statement of Al Devaney, Reply Comments of INTV, MM Docket No. 90-162, *supra,* Exhibit 3.

[31]*See* Reply Comments of INTV, MM Docket No. 90-162, *supra.*

[32]OPP Paper at 40.

[33]Many owners were more tenacious in the past, when the "greater fool" theory pervaded the television acquisition marketplace. Sustaining large loses was possible because owners knew they could still sell their stations at a handsome profit. Usually, when they did sell, they sold to buyers who leveraged the transaction heavily. However, as the OPP Paper notes, the perceived value of television stations has decreased. Many of the greater fools, thus, have been proven, indeed, greater fools. They undoubtedly have led the parade to the bankruptcy courts.

[34]OPP Paper at 43.

[35]The staff fails to identify the "industry observers" which provide the source for its opinion.

[36]OPP Paper at 44.

[37]OPP Paper at 119-120

[38]The weak network scatter market is more readily explained by the current recession.

[39]"The TV Networks in Play," *Broadcasting,* November 11, 1991, at 3-4.

[40]OPP Paper at 123.

[41]OPP Paper at 126.

[42]OPP Paper at 130-131.

[43]OPP Paper at 135.

[44]OPP Paper at 138.

[45]OPP Paper at 137.

[46]OPP Paper at 140.

[47]Further Comments of INTV, MM Docket No. 90-162 (filed November 21, 1990), Exhibit 2 at 5.

[48]OPP Paper at 141.

[49]OPP Paper at 143.

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[50]OPP Paper at 145.

[51]OPP Paper at 146.

[52]OPP Paper at 149.

[53]*Report and Order*, MM Docket No. 90-162, FCC 91-114 (released May 29, 1991) at ¶¶ 38-47.

[54]OPP Paper at 149, n.195.

[55]OPP Paper at 157-158.

[56]OPP Paper at 151.

[57]OPP Paper at 152-153.

[58]*Report and Order, supra.*

[59]OPP Paper at 154.

[60]OPP Paper at 159.

[61]*See* Reply Comments of INTV, MM Docket No. 90-4 (filed September 25, 1991).

[62]OPP Paper at 160.

[63]OPP Paper at 162.

[64]The staff also concedes another similar reduction in service to the "uncabled" minority, by-pass of broadcast affiliates by the broadcast networks. OPP Paper at 163.

[65]OPP Paper at 165.

[66]OPP Paper at 166.

[67]OPP Paper at 168.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

MM Docket No. 91-221

In the Matter of	)
	)
Review of the Policy Implications	)
of the	)
Changing Video Marketplace	)

COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

EXHIBIT 3

A BRIEF HISTORY

THE CONGRESS,
THE COMMISSION,
THE CABLE,
AND
ITS LICENSE

THE CONGRESS, THE COMMISSION, THE CABLE, AND ITS LICENSE

A Brief History

Cable television developed long after the enactment of the Copyright Act of 1909. In 1968, the United States Supreme Court held that cable television operators infringed no copyrights by retransmitting the signals of local television stations.[1] However, the Federal Communications FCC had asserted jurisdiction over cable television in 1965.[2] The Supreme Court upheld the FCC's assertion of jurisdiction in 1968.[3] During the late-60's and early-70's, the FCC conducted a comprehensive proceeding to determine how cable television should be regulated. Meanwhile, CBS had sued a major cable firm, Teleprompter, alleging copyright infringement for cable retransmission of *distant* signals. The uncertainty spawned by this litigation created a virtual standstill at the FCC. Neither the broadcast nor cable industries wanted to embrace regulations when the prospect remained that one side or the other might be vindicated in the copyright litigation. Uncertainty over the outcome of the litigation also paralyzed Congressional action, stalling final action on an already decades old effort to update the copyright law. Meanwhile, in a sea of uncertainty over cable's copyright liability and with systems' permitted to retransmit distant signals by the FCC only after prohibitively time-consuming adjudicatory proceedings, cable television development languished.

In 1971, to break the impasse, the White House stepped in and virtually imposed a compromise on the warring industries. The 1971 "Consensus Agreement" was designed to resolve the numerous copyright and communications issues arising from cable systems' retransmission of distant signals. The compromise was approved and supported (albeit briefly) by the program supply (MPAA), broadcast (NAB), and cable television industries (NCTA).

Pursuant to the Consensus Agreement, the FCC in 1972 adopted regulations governing cable carriage of broadcast signals.[4] The new FCC rules required carriage of local television station signals, limited the number of distant signals which could be imported into local television markets, protected network and syndicated program exclusivity, and required that the most proximate distant signals be imported. Congress then was expected to pass copyright legislation establishing a compulsory license to carry local signals and those distant signals which the

Commission's new rules permitted cable systems to carry, subject to protection of valid exclusivity agreements. A statutory fee schedule for the compulsory license would be negotiated by the cable and program supply industries for inclusion in the new copyright law. Failing that, fees would be negotiated privately or settled via binding arbitration.

Although the FCC had adopted rules reflecting the Consensus Agreement, Congress, caught up in a comprehensive rewrite of the copyright law, did not enact the compulsory license until 1976. In the interim, the Supreme Court in 1974 held that cable systems incurred no liability under the 1909 Copyright Act for retransmission of *distant* broadcast signals.[5] The Court's decision enhanced the cable industry's bargaining position in the ongoing Congressional debate. Consequently, the compulsory license enacted by Congress in the 1976 Copyright Act was significantly different from -- and considerably less onerous for cable systems than -- that envisioned by the parties and the FCC in 1972. In particular, a minimal fee schedule replaced negotiated rates and the compulsory license would be available for any and all signals the FCC might permit systems to carry (not just those permitted under the original 1972 rules).

In enacting the compulsory license for cable retransmission of broadcast signals, Congress acknowledged the continuing role of communications policy and the FCC in determining the extent and conditions of cable carriage of broadcast signals. The new copyright act established the Copyright Royalty Tribunal (CRT) and included provisions directing the CRT to distribute royalties collected from cable systems and to adjust the compulsory license fees in the event the FCC modified its rules governing signal carriage.

Even before the Congress completed passage of the 1976 Copyright Act, the FCC had begun to dismantle the rules it had adopted in 1972. The FCC initially repealed the so-called "leapfrogging" rule, which had required cable systems to carry the closest distant signals. Coupled with the Commission's deregulation of satellite television receive-only antennas (TVRO's), the repeal of the leapfrogging prohibition opened the door to development of the so-called "superstations."

Once the new copyright law became effective, a major effort was launched to eliminate the FCC's rules requiring syndicated program exclusivity protection and limiting the number of distant signals which could be retransmitted by cable systems. The FCC ultimately eliminated those rules in 1980, leaving in place only the "must carry" rules for local stations and the network non-duplication rules from among the rules envisioned and adopted in 1972. As called for by the Copyright Act, the CRT adjusted the fees for additional distant signals beyond those permitted by the 1972 rules and imposed a surcharge on distant signals no longer subject to the syndicated exclusivity rules.[6] In 1984, Congress passed the 1984 Cable Act, largely deregulating cable.[7]

Five years later the courts held the FCC's "must carry" rules unconstitutional. The FCC's attempt to reinstate must carry rules met the same fate in 1987. Consequently, cable systems now have no obligation to carry local stations.

Meanwhile, by 1988, over 50% of television households had subscribed to cable television. Realizing that cable had matured and that "must carry" rules were suspect constitutionally, the FCC in 1989 recommended repeal of the compulsory license and reimposed syndicated exclusivity requirements. In 1990, the FCC reiterated its call for repeal of the compulsory license, but urged reinstitution of "must carry" requirements pending Congressional action to repeal the compulsory license.

Also in 1990, the House passed cable legislation which among other things would have enacted statutory must carry requirements. The Senate failed to pass the bill, however.

Most recently, the FCC launched a comprehensive inquiry into the so-called "new video marketplace." The FCC is seeking therein to appreciate the changes in the marketplace for video programming and the public policy implications of those changes and to modify its rules accordingly. Underlying the FCC's inquiry is a staff study which concluded that:

> The broadcast television industry has suffered an irreversible, long-term decline in audience and revenue shares, which will continue through the current decade.[8]

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[1]*Fortnightly Corp. United Artists Television*, 392 U.S. 390 (1968).

[2]*First Report and Order on Microwave-Served CATV*, 38 FCC 683 (1965).

[3]*United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968)

[4]*Cable Television Report and Order*, 36 FCC 2d 141 (1972).

[5]*Teleprompter v. Columbia Broadcasting System, Inc.*, 415 U.S. 394 (1974).

[6]In 1981-2, legislation designed to codify syndex, must carry rules, and reaffirm the compulsory license passed the House (H.R. 5949), but not the Senate. It had been supported by NAB, NCTA, and MPAA. The House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, marking up the bill on a sequential referral, narrowly voted down a proposal to eliminate the compulsory license,

[7]Although the Act prohibits most restrictions on cable programming and services, the Congress expressly recognized the FCC's "must carry" rules.

[8]Setzer, Florence, and Levy, Johnathan, "Broadcast Television in a Multichannel Environment," OPP Working Paper Series, No. 26 (June, 1991), 6 FCC Rcd 3996 (1991) [hereinafter cited as "OPP Paper"].

NUMBER OF TV HOUSEHOLDS IN EACH ADI TODAY PER STATION CATEGORY - SORTED BY ADI RANK

ADI NAME	ADI RANK	# OPER STA.	# CP STA.	# APP STA.	# VAC STA.	ADI TV HH (000)	NUMBER OF TV HOUSEHOLDS IN EACH ADI PER: OPERATING STATION	OP + CP STATIONS	OP+CP+AP STATIONS	OP+CP+AP+V STATIONS
New York	1	20	2	1		7,075,000	353,750	321,591	307,609	307,609
Los Angeles	2	17	5	2	1	5,036,000	296,235	228,909	209,833	201,440
Chicago	3	14	1		1	3,135,900	223,993	209,060	209,060	195,994
Philadelphia	4	13	2		1	2,736,000	210,462	182,400	182,400	171,000
San Francisco	5	17	1			2,223,600	130,800	123,533	123,533	123,533
Boston	6	13	2			2,115,500	162,731	141,033	141,033	141,033
Dallas-Fort Worth	7	12	3	1	3	1,757,700	146,475	117,180	109,856	92,511
Detroit	8	8			1	1,726,700	215,838	215,838	215,838	191,856
Washington, DC	9	7	2		3	1,718,600	245,514	190,956	190,956	143,217
Houston	10	11	2	1		1,483,200	134,836	114,092	105,943	105,943
Cleveland	11	10	1			1,445,100	144,510	131,373	131,373	131,373
Atlanta	12	10				1,421,300	142,130	142,130	142,130	142,130
Tampa-St. Petersburg	13	11	2		2	1,357,700	123,427	104,438	104,438	90,513
Minneapolis-St. Paul	14	11	1	1	4	1,355,000	123,182	112,917	104,231	79,706
Miami	15	10	3			1,326,100	132,610	102,008	102,008	102,008
Seattle-Tacoma	16	9	4		4	1,311,600	145,733	100,892	100,892	77,153
Pittsburgh	17	6			1	1,156,800	192,800	192,800	192,800	165,257
St. Louis	18	8				1,111,600	138,950	138,950	138,950	138,950
Denver	19	12	3		1	1,048,400	87,367	69,893	69,893	65,525
Phoenix	20	10	1	1	2	1,029,900	102,990	93,627	85,825	73,564
Sacramento-Stockton	21	8				1,025,600	128,200	128,200	128,200	128,200
Baltimore	22	6				945,700	157,617	157,617	157,617	157,617
Hartford-New Haven	23	6	2	1		911,400	151,900	113,925	101,267	101,267
Orlando-Daytona Beach-Melbourne	24	10	3		1	909,100	90,910	69,931	69,931	64,936
San Diego	25	7				906,400	129,486	129,486	129,486	129,486
Indianapolis	26	10			1	873,800	87,380	87,380	87,380	79,436
Portland, OR	27	8	1		1	814,900	101,863	90,544	90,544	81,490
Milwaukee	28	8	1		1	773,400	96,675	85,933	85,933	77,340
Kansas City	29	7		1		763,500	109,071	109,071	95,438	95,438
Cincinnati	30	5			1	752,000	150,400	150,400	150,400	125,333
Charlotte	31	6	2	1		744,100	124,017	93,013	82,678	82,678
Nashville	32	8	3	1	1	711,900	88,988	64,718	59,325	54,762
Columbus, OH	33	6				690,600	115,100	115,100	115,100	115,100
Raleigh-Durham	34	8	1	1	1	683,000	85,375	75,889	68,300	62,091
Greenville-Spartanburg, SC-Asheville, NC	35	6	1		3	650,900	108,483	92,986	92,986	65,090
New Orleans	36	5	1	3	1	641,700	128,340	106,950	71,300	64,170
Buffalo	37	6	1		1	614,300	102,383	87,757	87,757	76,788
Memphis	38	5	2			609,600	121,920	87,086	87,086	87,086
Grand Rapids-Kalamazoo-Battle Creek	39	7	1			604,500	86,357	75,563	75,563	75,563
Oklahoma City	40	8	2		3	600,000	75,000	60,000	60,000	46,154
Salt Lake City	41	8	2		3	597,700	74,713	59,770	59,770	45,977
San Antonio	42	8		3	1	588,800	73,600	73,600	53,527	49,067
Norfolk-Portsmouth-Newport News-Hampton	43	6	1			577,000	96,167	82,429	82,429	82,429
Harrisburg-York-Lancaster-Lebannon	44	6			1	564,400	94,067	94,067	94,067	80,629
Providence, RI-New Bedford, MA	45	4	2			559,600	139,900	93,267	93,267	93,267
West Palm Beach-Fort Pierce-Vero Beach	46	5	1		1	533,800	106,760	88,967	88,967	76,257
Louisville	47	6	1			530,400	88,400	75,771	75,771	75,771
Grnsboro-Winston Salem-High Point	48	8			1	522,200	65,275	65,275	65,275	58,022
Birmingham	49	7			3	518,600	74,086	74,086	74,086	51,860
Charleston-Huntington	50	5	2		3	511,900	102,380	73,129	73,129	51,190

NUMBER OF TV HOUSEHOLDS IN EACH ADI TODAY PER STATION CATEGORY - SORTED BY ADI RANK

ADI NAME	ADI RANK	# OPER STA.	# CP STA.	# APP STA.	# VAC STA.	ADI TV HH (000)	NUMBER OF TV HOUSEHOLDS IN EACH ADI PER: OPERATING STATION	OP + CP STATIONS	OP+CP+AP STATIONS	OP+CP+AP+V STATIONS
Dayton	51	6			1	506,300	84,383	84,383	84,383	72,329
Albuquerque	52	15	2		4	506,000	33,733	29,765	29,765	24,095
Wilkes Barre-Scranton	53	5	2			492,400	98,480	70,343	70,343	70,343
Albany-Schenectady-Troy	54	5	1			491,500	98,300	81,917	81,917	81,917
Jacksonville	55	6	3			474,300	79,050	52,700	52,700	52,700
Tulsa	56	7	1	1	2	471,300	67,329	58,913	52,367	42,845
Little Rock	57	6	2			461,200	76,867	57,650	57,650	57,650
Flint-Saginaw-Bay City	58	5			2	453,700	90,740	90,740	90,740	64,814
Fresno-Visalia	59	7	3		1	437,700	62,529	43,770	43,770	39,791
Wichita-Hutchinson	60	13	1		4	431,500	33,192	30,821	30,821	23,972
Mobile, AL-Pensacola, FL	61	9	1			419,000	46,556	41,900	41,900	41,900
Toledo	62	5		1	1	414,500	82,900	82,900	69,083	59,214
Richmond	63	5			1	410,800	82,160	82,160	82,160	68,467
Knoxville	64	5	1	1		402,800	80,560	67,133	57,543	57,543
Shreveport, LA-Texarkana, TX	65	4	1	1	3	389,600	97,400	77,920	64,933	43,289
Green Bay-Appelton	66	7	4		2	388,400	55,486	35,309	35,309	29,877
Des Moines	67	4	2		4	387,500	96,875	64,583	64,583	38,750
Roanoke-Lynchburg	68	6	3		1	376,300	62,717	41,811	41,811	37,630
Syracuse	69	5	1		1	373,600	74,720	62,267	62,267	53,371
Portland-Poland Spring	70	4	1		1	369,700	92,425	73,940	73,940	61,617
Omaha	71	4	2			363,400	90,850	60,567	60,567	60,567
Austin, TX	72	4	2			362,900	90,725	60,483	60,483	60,483
Lexington	73	6	1		2	358,800	59,800	51,257	51,257	39,867
Rochester, NY	74	4				354,100	88,525	88,525	88,525	88,525
Springfield-Decatur-Champaign	75	8			1	342,600	42,825	42,825	42,825	38,067
Paducah, KY-Cape Girardeau, MO -Harrisburg-Marion, IL	76	6	2		3	332,800	55,467	41,600	41,600	30,255
South Bend-Elkhart	77	4				321,600	80,400	80,400	80,400	80,400
Spokane	78	5	2		1	321,300	64,260	45,900	45,900	40,163
Davenport, IA-Rock Island-Moline, IL	79	5			2	316,400	63,280	63,280	63,280	45,200
Tucson	80	5	2		2	313,900	62,780	44,843	44,843	34,878
Chattanooga	81	5	1			310,800	62,160	51,800	51,800	51,800
Cedar Rapids-Waterloo-Dubuque	82	5	2		2	308,500	61,700	44,071	44,071	34,278
Springfield, MO	82	4			1	308,500	77,125	77,125	77,125	61,700
Bristol, VA-Kingsport-Johnson City, TN	84	4	1			307,100	76,775	61,420	61,420	61,420
Huntsville-Decatur-Florence	85	6			2	302,500	50,417	50,417	50,417	37,813
Las Vegas	86	7		1		300,600	42,943	42,943	37,575	37,575
Columbia, SC	87	4	1		1	300,300	75,075	60,060	60,060	50,050
Jackson, MS	88	4	3		1	293,500	73,375	41,929	41,929	36,688
Johnstown-Altoona	89	5	1		1	285,800	57,160	47,633	47,633	40,829
Madison	90	4	1		1	280,100	70,025	56,020	56,020	46,683
Youngstown	91	3				277,000	92,333	92,333	92,333	92,333
Evansville	92	5			3	264,500	52,900	52,900	52,900	33,063
Fort Myers-Naples	93	5	1			260,600	52,120	43,433	43,433	43,433
Baton Rouge	94	4				254,100	63,525	63,525	63,525	63,525
Greenville-New Bern-Washington	95	4	2		1	252,900	63,225	42,150	42,150	36,129
Waco-Temple	96	5	1	1		249,000	49,800	41,500	35,571	35,571
Springfield, MA	97	2			1	246,100	123,050	123,050	123,050	82,033
Lincoln-Hastings-Kearney	98	7	1	1	4	243,900	34,843	30,488	27,100	18,762
Burlington, VT-Plattsburgh, NY	99	4		1	1	241,600	60,400	60,400	48,320	40,267

NUMBER OF TV HOUSEHOLDS IN EACH ADI TODAY PER STATION CATEGORY - SORTED BY ADI RANK

ADI NAME	ADI RANK	# OPER STA.	# CP STA.	# APP STA.	# VAC STA.	ADI TV HH (000)	NUMBER OF TV HOUSEHOLDS IN EACH ADI PER: OPERATING STATION	OP + CP STATIONS	OP+CP+AP STATIONS	OP+CP+AP+V STATIONS
El Paso	100	9	1			237,700	26,411	23,770	23,770	23,770
Colorado Springs-Pueblo	101	4			1	237,300	59,325	59,325	59,325	47,460
Fort Wayne	102	5				233,900	46,780	46,780	46,780	46,780
Sioux Falls-Mitchell	103	8	1		1	232,300	29,038	25,811	25,811	23,230
Savannah	104	4		1		232,200	58,050	58,050	46,440	46,440
Montgomery-Selma	105	5	1	1	1	225,900	45,180	37,650	32,271	28,238
Charleston, SC	106	4	1			224,100	56,025	44,820	44,820	44,820
Lansing	107	4	1			223,900	55,975	44,780	44,780	44,780
Peoria-Bloomington	108	4	1			223,100	55,775	44,620	44,620	44,620
Fargo	109	8			2	218,600	27,325	27,325	27,325	21,860
Salinas-Monterey	110	4				213,200	53,300	53,300	53,300	53,300
Augusta	111	4				211,100	52,775	52,775	52,775	52,775
Santa Barbara-Santa Maria-San Luis Obispo	112	5		1		207,600	41,520	41,520	34,600	34,600
McAllen-Brownsville	113	4	1	1	1	204,600	51,150	40,920	34,100	29,229
Fort Smith	114	4				198,100	49,525	49,525	49,525	49,525
Tallahassee, FL-Thomasville, GA	115	4			1	194,800	48,700	48,700	48,700	38,960
Lafayette, LA	116	3				194,600	64,867	64,867	64,867	64,867
Reno	117	5	1		3	192,800	38,560	32,133	32,133	21,422
Tyler-Longview	118	5	1		5	191,000	38,200	31,833	31,833	17,364
Columbus, GA	119	5			1	186,200	37,240	37,240	37,240	31,033
Eugene	120	6	1	1	1	184,100	30,683	26,300	23,013	20,456
Monroe, LA-El Dorado, AR	121	4		1	2	182,900	45,725	45,725	36,580	26,129
Amarillo	122	6			1	178,100	29,683	29,683	29,683	25,443
Macon	123	4		1	1	176,100	44,025	44,025	35,220	29,350
Corpus Christi	124	4			1	174,900	43,725	43,725	43,725	34,980
La Crosse-Eau Claire	125	5	1		2	168,700	33,740	28,117	28,117	21,088
Yakima	126	7			1	168,200	24,029	24,029	24,029	21,025
Traverse City-Cadillac	127	7			1	166,700	23,814	23,814	23,814	20,838
Wausau-Rhinelander	127	3			3	166,700	55,567	55,567	55,567	27,783
Columbus-Tupelo	129	3			2	165,100	55,033	55,033	55,033	33,020
Duluth, MN-Superior, WI	130	4	1		4	164,400	41,100	32,880	32,880	18,267
Wichita Falls, TX-Lawton, OK	131	4	1		1	162,900	40,725	32,580	32,580	27,150
Terre Haute	132	3			1	161,800	53,933	53,933	53,933	40,450
Beaumont-Port Arthur	133	3			1	161,200	53,733	53,733	53,733	40,300
Binghamton	134	3				158,600	52,867	52,867	52,867	52,867
Rockford	135	4				157,900	39,475	39,475	39,475	39,475
Boise	136	4	1		2	157,600	39,400	31,520	31,520	22,514
Topeka	137	3			2	157,300	52,433	52,433	52,433	31,460
Sioux City	137	3				157,300	52,433	52,433	52,433	52,433
Chico-Redding	139	4			2	157,200	39,300	39,300	39,300	26,200
Florence, SC	140	3	2			156,100	52,033	31,220	31,220	31,220
Bakersfield	141	4			1	155,600	38,900	38,900	38,900	31,120
Erie	142	4				153,500	38,375	38,375	38,375	38,375
Wheeling, WV-Steubenville, OH	143	2				152,800	76,400	76,400	76,400	76,400
Wilmington	144	3				145,600	48,533	48,533	48,533	48,533
Bluefield-Beckley-Oak Hill	145	2	1	1		145,500	72,750	48,500	36,375	36,375
Rochester, MN-Mason City, IA-Austin, MN	146	3				143,900	47,967	47,967	47,967	47,967
Minot-Bismarck-Dickinson, ND-Glendive, MT	147	11			6	143,200	13,018	13,018	13,018	8,424
Odessa-Midland	148	6			2	143,000	23,833	23,833	23,833	17,875
Joplin, MO-Pittsburg, KS	149	4	1		1	142,000	35,500	28,400	28,400	23,667

NUMBER OF TV HOUSEHOLDS IN EACH ADI TODAY PER STATION CATEGORY - SORTED BY ADI RANK

ADI NAME	ADI RANK	# OPER STA.	# CP STA.	# APP STA.	# VAC STA.	ADI TV HH (000)	NUMBER OF TV HOUSEHOLDS IN EACH ADI PE OPERATING STATION	OP + CP STATIONS	OP+CP+AP STATIONS	OP+CP+AP STATIC
Lubbock	150	4	1		1	139,700	34,925	27,940	27,940	23,2
Albany, GA	151	4	5		1	138,000	34,500	15,333	15,333	13,8
Medford	152	5		1	1	135,400	27,080	27,080	22,567	19,3
Columbia-Jefferson City	153	4				126,900	31,725	31,725	31,725	31,7
Clarksburg-Weston	154	3				126,300	42,100	42,100	42,100	42,1
Bangor	155	3				118,300	39,433	39,433	39,433	39,4
Quincy, IL-Hannibal, MO	156	3				116,000	38,667	38,667	38,667	38,6
Biloxi-Gulfport-Pascagoula	157	2			2	115,300	57,650	57,650	57,650	28,8
Abilene-Sweetwater	158	3			1	113,900	37,967	37,967	37,967	28,4
Dothan	159	3	1		1	105,500	35,167	26,375	26,375	21,1
Idaho Falls-Pocatello	160	3			5	105,200	35,067	35,067	35,067	13,1
Utica	161	3		1	1	101,900	33,967	33,967	25,475	20,3
Salisbury	162	2			1	95,900	47,950	47,950	47,950	31,9
Rapid City	163	6	1	1	2	92,200	15,367	13,171	11,525	9,22
Laurel-Hattiesburg	164	2			1	91,000	45,500	45,500	45,500	30,33
Gainesville	165	2	1		1	89,500	44,750	29,833	29,833	22,37
Alexandria, LA	166	2			1	88,100	44,050	44,050	44,050	29,36
Elmira	167	2	1	1		84,600	42,300	28,200	21,150	21,15
Billings-Hardin	168	4	2		1	83,900	20,975	13,983	13,983	11,98
Panama City	169	3		1		83,600	27,867	27,867	20,900	20,90
Watertown-Carthage	170	2				82,800	41,400	41,400	41,400	41,40
Greenwood-Greenville	171	2			2	82,500	41,250	41,250	41,250	20,62
Jonesboro	172	1		1		77,500	77,500	77,500	38,750	38,75
Lake Charles	173	2				76,500	38,250	38,250	38,250	38,25
Missoula	174	4			1	76,000	19,000	19,000	19,000	15,20
Ardmore-Ada	175	2				74,700	37,350	37,350	37,350	37,35
Harrisonburg	176	1				73,400	73,400	73,400	73,400	73,40
Palm Springs	177	2				72,300	36,150	36,150	36,150	36,15
El Centro, CA-Yuma, AZ	178	4	1		1	67,400	16,850	13,480	13,480	11,23
Meridian	179	3				66,500	22,167	22,167	22,167	22,16
Grand Junction-Durango	180	4			3	65,700	16,425	16,425	16,425	9,38
Great Falls	181	3		1	6	64,600	21,533	21,533	16,150	6,46
Jackson, TN	182	2				59,300	29,650	29,650	29,650	29,65
Tuscaloosa	183	2			1	58,900	29,450	29,450	29,450	19,63
Marquette	184	1	2			55,000	55,000	18,333	18,333	18,33
Eureka	185	3	1			53,300	17,767	13,325	13,325	13,32
San Angelo	186	3	2			50,600	16,867	10,120	10,120	10,12
Butte	187	3		1	1	48,300	16,100	16,100	12,075	9,66
St. Joseph	188	2				47,400	23,700	23,700	23,700	23,70
Bowling Green	189	1	1		1	47,000	47,000	23,500	23,500	15,66
Anniston	190	1				45,600	45,600	45,600	45,600	45,60
Lafayette, IN	191	1				44,300	44,300	44,300	44,300	44,30
Cheyenne, WY-Scottsbluff, NE-Sterling, CO	192	5	1		1	44,200	8,840	7,367	7,367	6,31
Casper-Riverton	193	6			1	43,900	7,317	7,317	7,317	6,27
Hagerstown	194	2				43,300	21,650	21,650	21,650	21,65
Lima	195	2			1	41,600	20,800	20,800	20,800	13,86
Charlottesville	195	1		1		41,600	41,600	41,600	20,800	20,80
Parkersburg	197	1			1	39,100	39,100	39,100	39,100	19,55
Laredo	198	4				37,700	9,425	9,425	9,425	9,42
Zanesville	199	1				37,200	37,200	37,200	37,200	37,20

NUMBER OF TV HOUSEHOLDS IN EACH ADI TODAY PER STATION CATEGORY - SORTED BY ADI RANK

ADI NAME	ADI RANK	# OPER STA.	# CP STA.	# APP STA.	# VAC STA.	ADI TV HH (000)	NUMBER OF TV HOUSEHOLDS IN EACH ADI PER: OPERATING STATION	OP + CP STATIONS	OP+CP+AP STATIONS	OP+CP+AP+V STATIONS
Twin Falls	200	2				30,100	15,050	15,050	15,050	15,050
Flagstaff	201	1	3			29,900	29,900	7,475	7,475	7,475
Presque Isle	202	1			1	29,000	29,000	29,000	29,000	14,500
Ottumwa, IA-Kirksville, MO	203	2				28,700	14,350	14,350	14,350	14,350
Bend	204	1				26,500	26,500	26,500	26,500	26,500
Victoria	205	2	1			26,300	13,150	8,767	8,767	8,767
Mankato	206	1				23,200	23,200	23,200	23,200	23,200
Helena	207	1	1			19,300	19,300	9,650	9,650	9,650
North Platte	208	1				18,100	18,100	18,100	18,100	18,100
Alpena	209	1				15,700	15,700	15,700	15,700	15,700
Alaska	0	11			6					
Charlotte-Amalie-Christiansted	0				4					
Guam	0	2			1					
Hawaii	0	19	1		6					
Puerto Rico	0	19	8		1					

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

MM Docket No. 91-221

In the Matter of	)
	)
Review of the Policy Implications	)
of the	)
Changing Video Marketplace	)

COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

EXHIBIT 4